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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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BANNER & WITCOFF  
1001 G STREET N W  
SUITE 1100  
WASHINGTON, DC 20001

EXAMINER

SHORT, PATRICIA A

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 04/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/055 172

Applicant(s)

Dalgewicz et al

Examiner

Short

Group Art Unit

1712

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE one MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on November 19, 2002
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-26 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☐ Claim(s) is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☒ Claim(s) 1-26 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 1712

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-20, 23, 24 and 26, drawn to a composition comprising a bulk polymer, additive and CES, classified in class 525, subclass 166.
- II. Claims 21, 22 and 25, drawn to a layered composition comprising a first thermoplastic polymeric layer and a second polymeric layer, classified in class 428, subclass 480.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a molding resin without the chemically interactive second laminated or co-extruded layer and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Art Unit: 1712

Additionally, applicant is required to make the following **three** elections of species.

Claims 1-26 are generic to a plurality of disclosed patentably distinct species comprising species for the bulk polymer that are PET, PEN, PETG, PCT, PCTA and PTT. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Claims 1-26 are generic to a plurality of disclosed patentably distinct species comprising species for the additive that are ethylene/methylacrylate copolymer, ethylene/butylacrylate copolymer, ethylene/ethylacrylate copolymer and ethylene/ethylhexylmethacrylate copolymer. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Claims 1-26 are generic to a plurality of disclosed patentably distinct species comprising species for the CES that are ethylene/glycidyl methacrylate copolymer, ethylene/maleic anhydride copolymer, ethylene/glycidyl methacrylate/methylacrylate terpolymer, ethylene/glycidyl

Art Unit: 1712

methacrylate/ethylacrylate terpolymer, ethylene/glycidyl methacrylate/butylacrylate terpolymer, ethylene/glycidyl methacrylate/ethylhexyl acrylate terpolymer, ethylene/maleic anhydride/methylacrylate terpolymer, ethylene/maleic anhydride/ethylacrylate terpolymer, ethylene/maleic anhydride/butylacrylate terpolymer and ethylene/maleic anhydride/ethylhexyl acrylate terpolymer. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

P. Short

April 21, 2003

Phone (703) 308-2395

Fax (703) 872-9310

**PATRICIA A. SHORT**  
**PRIMARY EXAMINER**

*Patricia A. Short*